

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA, :

4 :

5 v. :

14 cr 741

6 YEHUDA RUBIN, :

7 Defendant. :

8 -----X

9 United States Courthouse  
10 White Plains, New York

11 NOVEMBER 27, 2017

12 B e f o r e :

13 HON. KENNETH M. KARAS  
14 United States District Judge

15 A P P E A R A N C E S

16 KATHRYN MARTIN

17 BENJAMIN ALLEE

18 Assistant United States Attorneys

19 KATHLEEN CASSIDY

20 SUSAN NECHELES

21 Attorney for Defendant

P R O C E E D I N G S

THE DEPUTY CLERK: All rise. The Honorable Kenneth M. Karas presiding. United States of America versus Yehuda Rubin, 14 cr 741.

Counsel, please state your appearances.

MR. ALLEE: Good afternoon, your Honor Benjamin Allee and Kathryn Martin for the government.

THE COURT: Good afternoon to you both.

MS. NECHELES: Good afternoon, your Honor.

Susan Necheles and Kate Cassidy for Mr. Rubin who's here with us, Yehuda Rubin.

THE COURT: Good afternoon you all. Please be seated. All right. We're here for Mr. Rubin's sentence. There's been quite a flurry of filings. So I just want to make sure that we're all on the same page.

Starting with the presentence report, the report I read was last revised on August 23. Is that the most recent report you all have?

MR. ALLEE: Yes, your Honor.

MS. NECHELES: Yes, your Honor.

THE COURT: Okay. And then on behalf of Mr. Rubin, there was the sentencing submission -- well, there was October 31, and then there was the redacted corrected one on November 1. And then, of course, I've read that submission and then all the exhibits.

1           And then there was a reply submission dated  
2 November 22nd. And then I also got -- and then I also had  
3 exhibits and I've read those. And I get yesterday, something  
4 from the Aleph Institute, A-L-E-P-H, dated November 26.

5           Is there anything else I should have read on  
6 Mr. Rubin's behalf?

7           MS. NECHELES: Your Honor, did you get our reply?

8           THE COURT: I mentioned that. The reply was  
9 November 22nd.

10          MS. NECHELES: And there was the government's. I  
11 guess you didn't mention the government's?

12          THE COURT: Well, I'm only talking about from your  
13 perspective. I wanted to make sure I've read everything from  
14 Mr. Rubin's perspective. So I haven't left anything out.

15          And then the government, I've read their sentencing  
16 memorandum dated November 9 along with all the exhibits. Is  
17 there anything else I should have read on the government's  
18 behalf?

19          MR. ALLEE: No, your Honor.

20          THE COURT: All right. In terms of the presentence  
21 report, are there any objections on Mr. Rubin's behalf?

22          MS. NECHELES: Your Honor, I think we had submitted a  
23 letter dated July 20.

24          THE COURT: I thought that things got resolved  
25 though, but you tell me --

1 MS. NECHELES: I believe they are all resolved.

2 THE COURT: Okay. So you've had enough time to go  
3 over the presentence report with Mr. Rubin and then there are  
4 no objections currently?

5 MS. NECHELES: Yes.

6 THE COURT: Okay. Did you review the report?

7 MR. ALLEE: Yes, your Honor.

8 THE COURT: Any objections?

9 MR. ALLEE: No, your Honor.

10 THE COURT: All right. So I guess the best way to  
11 start is -- I don't know who's going to speak on behalf of  
12 Mr. Rubin, but is it going to be you, Ms. Necheles?

13 MS. NECHELES: I am, your Honor.

14 THE COURT: All right. So then you can go first and  
15 then the government and you can respond to anything they say.  
16 Otherwise Mr. Rubin will have the opportunity for the last  
17 word.

18 MS. NECHELES: Thank you, your Honor. And I know you  
19 have read carefully everything that was submitted and I just  
20 want to focus today on a few things.

21 THE COURT: Okay.

22 MS. NECHELES: And I will start as we all must start  
23 with law, with 3553(a), which asks your Honor to impose a  
24 sentence that is sufficient but not greater than necessary to  
25 comply with the objectives of sentencing and talks about

1 factors that your Honor must consider.

2           And the first factor, and what many courts have held  
3 is the most important factor, are the nature and circumstances  
4 of the offense and the history and characteristics of the  
5 defendant. So I'm going to start backwards. I'm going to talk  
6 first about the history and characteristics of the defendant.  
7 And then I'll talk about the nature and circumstance of the  
8 offense. And, finally, I will talk about the sentence which we  
9 submit, your Honor, would be sufficient to comply with the  
10 objectives of sentencing.

11           The first is who is Yehuda Rubin? And I'll refer to  
12 him as Yehuda because there's so many "Mr. Rubins" in this  
13 case. And I want to talk about his life first. Because when  
14 you sentence someone -- and I've done many sentencing as I'm  
15 sure your Honor has done many sentencing. And to me it's  
16 always a day where you look at the whole person, you look at  
17 who is this person. You don't just take the criminal conduct  
18 in the abstract. It's the good and the bad, but the good also  
19 that the person has done in their life should be accounted for  
20 on this day.

21           And here, your Honor, you've seen many letters from  
22 many people. You see many people here who have come and many  
23 of them have written letters. And they have -- and they talk  
24 about a person who really is -- a person this young really is  
25 an extraordinary person, a truly good man. And this case is

1 unusual because it's gone on for so long. And because of the  
2 length of this case, I've really gotten to know Mr. Rubin and  
3 also actually to know many of his friends and colleagues who  
4 are here in court today. And they spoke to me about him and  
5 I've seen what kind of a person that he is. And I've gotten to  
6 know his wife, as well, who is sitting here in the courtroom in  
7 the front.

8           And I want to start with his wife because Rachel  
9 Rubin wrote a remarkable letter, your Honor, which I submit is  
10 raw in its honesty. And she had talked to me about this many  
11 times in the past since I've first known her from the very day  
12 when she was arrested, and I saw her downstairs in the jail  
13 downstairs here. After that, we really -- she told me she --  
14 after that that she was an orphan and told me about her life  
15 and how she grew up.

16           And she didn't tell me at first about all of her  
17 phobias and those problems. I came to know them over time.  
18 And the two of them both told me at different times about the  
19 story of them getting to know each other and, you know, how  
20 they had first been introduced. And I work a lot in this  
21 community, your Honor. So I know some of the customs and I  
22 know that men and women get married very young. They don't  
23 know anybody of the opposite sex up to that point. They do not  
24 socialize or communicate and it's kind of traumatic. It's a  
25 scary thing at that age to sort of get thrown in with someone

1 else.

2 THE COURT: It's scary at any age.

3 MS. NECHELES: And I got married at 41 and it's not  
4 easy.

5 THE COURT: It's not easy, right.

6 MS. NECHELES: So maybe it's easier at 19. But I  
7 know it was very, very scary for Rachel. And given, you know,  
8 her history, it was hard to get to trust somebody. And they  
9 were 19 in getting married.

10 And I thought about it and I thought, you know,  
11 imagine you got married at 19 or I got married at 19. And I  
12 got married to someone who had these difficulties. And I came  
13 from an extraordinarily sheltered background where I had never  
14 spoken to someone of the opposite sex. Would I be able to deal  
15 with this? I think it is a testament to who Yehuda is, that he  
16 totally dealt with it. He is a person of deep compassion and  
17 deep ability to sort of pull beyond himself, to dig deep and go  
18 beyond.

19 This is a community where therapy is not spoken  
20 about. Problems like that are just not talked about. And he  
21 is not like that. He is a person -- you will see it and I saw  
22 it in letter after letter who, when someone is having a  
23 problem, someone is having a difficulty in their life, he  
24 confronts that. He doesn't hide from it. He doesn't think  
25 it's something to be ashamed of. He confronts it in their

1 whole person and helps. And that is what he did with Rachel.

2           And she tells you in her letter to your Honor -- and  
3 this is the only quote I'll read, but it really struck me about  
4 it. She tells you in her long letter, she says, "That is why  
5 Yehuda is my life. I'm nothing without him. He picked me up  
6 from the dirt and helped me rise above all of my challenges. I  
7 still have many things that make me worried or anxious. I have  
8 many fears that sometimes make it hard to get through the day.  
9 But I can always share these feelings with Yehuda and he knows  
10 just what to say and how to support me. He is my backbone. He  
11 is my support, my shelter, my everything. And that is the kind  
12 of man he is.

13           There are letters from so many family members telling  
14 how Yehuda is the person they turn to in an emergency. And in  
15 this same -- part of the same character, he is not a person who  
16 is afraid of dealing with the hard things in life. And it also  
17 goes to something else, and I think you'll see later when I'm  
18 talking about the business he started. He's very smart and  
19 very competent and very much able to sort of pull things  
20 together. He's organized. He's on top of things and he's a  
21 person that you go to to get that kind of help. And the things  
22 he has done are truly remarkable.

23           His sister-in-law, Faggi, and her husband write how  
24 she was in a car accident in Montreal. He and his wife,  
25 Rachel, immediately that night drove all the way up there that



1 night and immediately went to help. And they took the youngest  
2 baby back with them, Yachi, who was four years old, home with  
3 them to live not just for a few weeks, but for a year she lived  
4 in their house.

5           Your Honor, I can't even imagine what that must have  
6 been like. This child, who was -- probably must have been  
7 traumatized to all of a sudden be taken to someone else. It  
8 could not have been easy to take care of her for that year.  
9 And this, of course, is a testament to Rachel, of course, as  
10 well. But Yachi writes how they treated her just like one of  
11 their own, and she writes of these joyous memories of that  
12 year. That is the kind of person that Yedil and his wife are.

13           Daniel Hirsch, his brother-in-law, talked about how  
14 Yedil helped when his wife was diagnosed with a brain tumor.  
15 He got in touch with the community organization that helps.

16           And, your Honor, in many of these letters, you can  
17 tell that these letters are truthful and they're honest letters  
18 because they're corroborated by other letters. The  
19 organization, in fact, also writes about working with Yedil and  
20 how Yedil has helped out in different cases and given money to  
21 this organization.

22           He continues to help. He helped with his family.  
23 He's had the family stay in his home. They've stayed at the  
24 hospital with a person very much in this community. People  
25 don't stay in the hospital alone. And he has slept in the

1 hospital and cared and he continues today to help with this  
2 family.

3 Volvy Hirsch, who was a cousin of his, who is in this  
4 courtroom today here for Mr. Rubin, is a disabled young man and  
5 he's a cousin of Rachel's. He met at -- Mr. Rubin and Volvy  
6 met after Mr. Rubin got married and they became friends and  
7 Yedil started going to his house a couple of days, three days a  
8 week to help out and help him in the home.

9 But what is particularly striking to me about this  
10 letter and what I see other times and it's the same thing, he  
11 didn't just see a person who was disabled. Yedil saw someone  
12 who had a lot of potential, a lot that he could do in his life  
13 and he helped that person become what he could become.

14 And so Volvy writes about Yedil helping him learn to  
15 drive a car, helping him get a job in something that he really  
16 loves doing today, sending him business, staying in his life,  
17 helping him make a better life. These are just a few of the  
18 letters and a few of the examples and when I read through them,  
19 I really was overwhelmed by them. I thought, this is a very  
20 special young man. He is only 32 years old today. This is how  
21 he has led his life.

22 And it's not just confined to his community, your  
23 Honor. In fact, one of his employees, David Belizaire, was an  
24 employee who works at the business he works at right now, talks  
25 about how when Hurricane Irma hit his family in Florida, Yedil

1 helped not only with money, but he helped first off -- right to  
2 start off with help them get another house. He reached out and  
3 helped find them an apartment that they could move to to live.

4           Your Honor, this letter actually struck me very  
5 strongly because I have a lot of family who was hurt by the  
6 hurricane and it was so difficult and we were so frantic here.  
7 And so that kind of helped to be able to reach out to somebody  
8 and come in and help. I know I've been very appreciative and I  
9 know that Mr. Belizaire is. And since that time, he gave  
10 loans, employee loans, to this employee so that the employee  
11 could help further with the family.

12           And then there is the anonymous charity. And  
13 Maimonides says that to give to charity, the highest form of  
14 giving is to give anonymously so that other people don't know  
15 rather than to stand up and talk about it in temple, but to  
16 give anonymously. And that is what Moses Goldberg talks about  
17 Yehuda doing, about how there is a widow in the community, who  
18 every couple of months, they get together and figure out how  
19 are they going to help her pay her bills going forward. They  
20 raise money. They give money. They do what they need to do  
21 and they do it without fanfare, without making a big deal about  
22 it. And Mr. Goldberg was careful not to put the woman's name  
23 in there.

24           And I'm going to ask, your Honor, if one of the  
25 employees can speak, the bookkeeper from his company, Jessica

1 Futrell. Ryan can speak in a little while and she also will  
2 tell your Honor about the anonymous charity that Mr. Rubin  
3 gives. So that is who he is.

4 And so now I wanted to talk a little bit about the  
5 crime that he committed and what he has admitted to, because  
6 always to me, when I am standing at sentencing, I think about  
7 what -- well that's who he is, but why did a person like  
8 this -- why did a good person like this commit the criminal  
9 conduct that he's standing before your Honor for? And that is  
10 the second part -- or the first part of the most important  
11 factor I think that your Honor has to consider today.

12 I want to start with something we talked about in our  
13 sentencing memorandum and that is how young he is. And of all  
14 of the defendants in this case -- and the government has talked  
15 about it being a family and a conspiracy -- out of all of the  
16 defendants, Yehuda was the youngest.

17 At the time that this started in 2005 when he became  
18 a mortgage broker, he was 20 years old, got married at 19, his  
19 wife got pregnant, he was in school. In that community, if you  
20 are wealthy, you stay in school for a couple of years even  
21 after you're married, studying torah. But he was not wealthy  
22 and so he needed to get a job and it was the height of the real  
23 estate boom. And people seemed to be making a lot of money,  
24 particularly in Brooklyn in real estate and particularly in the  
25 Satmar community. The Satmar community was located in a place,

1 in an area in Brooklyn in Williamsburg that got rezoned.

2 And so all of a sudden, there was all this property  
3 that could be developed and at the same time, there was this  
4 boom in Brooklyn. And so you saw a lot of the Satmar  
5 community, a lot of young people and a lot of people going into  
6 real estate in this community. And that's what Yehuda saw. He  
7 saw many, many, many people going into real estate. He lived  
8 in -- upstate in Monroe, but he has close connections with  
9 Williamsburg. There's a lot of family in Williamsburg. The  
10 community is in both places, in Monroe and in Williamsburg.

11 So -- and there were other people in his family.  
12 It's not just the community, but he saw there were many other  
13 people in his family who were in real estate. And, in fact,  
14 you can see the first loan in this case that we're discussing  
15 is 118 Hart Street. And that, your Honor, was not Mr. Rubin --  
16 Lafayette. I'm sorry 118 -- 418 Lafayette. Sorry, your Honor.  
17 That was not his property. That property was a loan that he  
18 was the real estate -- the mortgage broker on.

19 The loan was not for him, although he got some of the  
20 money out of it because he had lent money previously to his  
21 father and some of the money came back to him. But you can see  
22 from the government's exhibit that most of the money, the vast  
23 majority of that money went to his father and other places like  
24 that. The government said that some of it went to pay off his  
25 creditor. As far as I can tell, that's like \$4,000 or

1 something like that. That was a creditor of Yehuda's, but the  
2 vast majority of that money went to Yehuda's father.

3 And -- but what you see also is that in this very  
4 first loan that he is handling in this case where he is the  
5 mortgage broker, there are false statements in it. And other  
6 people are putting in false statements. And it's accountant,  
7 who I believe is now a government witness, this accountant who  
8 was probably 30 years Yehuda's senior, he was putting in a  
9 false statement on his mother's wealth. I do not believe that  
10 it is credible to suggest that Yehuda told the accountant how  
11 to do this. I think that the accountant was saying this is the  
12 way it's done.

13 In any case, it is uncontested that what went on  
14 there and what went on in the next couple of loans was at the  
15 height of the no doc loan period. And, your Honor, it's kind  
16 of amazing when you research this a little bit and you Google.  
17 I mean, there's been books and there's been movies written.  
18 But the government has documented to an extent I didn't realize  
19 what went on during this period. How did this all happen? And  
20 they have documented with testimony about how the banks and the  
21 mortgage companies were really encouraging this wrongdoing.

22 Now the government cites a case which they stand for,  
23 United States v. Thomas, which they say stands for the  
24 proposition that it is not a mitigating circumstance or  
25 something to take into account at sentencing, that the victim

1 of the fraud encouraged the fraud or participated in the fraud.

2 The case doesn't say that. The case actually says  
3 it's not a defense. And it's not a defense. And it's not a  
4 defense and we are not giving it as a defense. And I'm not  
5 saying that this justified his action in any way, and Yehuda is  
6 not saying it.

7 What I'm trying to say is you need to step back to  
8 this time when this is going. How did this happen, how did  
9 somebody like him end up doing something?

10 THE COURT: So if somebody burglarizes an unlocked  
11 home, that's okay?

12 MS. NECHELES: No, your Honor.

13 THE COURT: Is it any less serious a crime if it's  
14 locked?

15 MS. NECHELES: So what I would say, your Honor, is if  
16 there is an abandoned neighborhood where all the houses are --  
17 people are living in them because they're squatters, it's  
18 illegal what they're doing. But after a while, it starts to  
19 look like this is what's okay and, particularly, to someone  
20 who's young.

21 I'm not saying -- and I don't want to create the  
22 impression that I'm saying that it's okay what he did, your  
23 Honor. It's not okay. I'm just trying to say, how is it that  
24 he got himself into this? How is it that he was putting in  
25 these totally false loan applications. And I think it was

1 partly a product of the time. It was kind of a shocking time.

2 I remember that, getting calls all the time  
3 suggesting that we take out more mortgages on our home. You  
4 would get these calls if you had a -- if you owned property  
5 saying, take out a HELOC loan. And so would that have made it  
6 okay for me to have lied? No. It would not have and I didn't,  
7 but I was a lawyer. I understood this is not what, you know, I  
8 could do. Yehuda was a 20-year old kid.

9 And I think that when you read the testimony from  
10 this -- from this commission who studied on it, who had all  
11 these witnesses, and you read how they talk about how they took  
12 these kids who were mortgage brokers, essentially trained them.  
13 This is, you know, don't worry about any of this. Just get the  
14 loans, get the loans, get the loans. You see why this  
15 happened.

16 And, your Honor, I've always thought, you know, I've  
17 now defended a lot of case and been involved in the last ten  
18 years in a lot of cases that grew out of this crisis. And I  
19 don't represent the banks. I don't represent the top bankers.  
20 I have always represented the people who took out the mortgages  
21 or the mortgage brokers. And those were the people who got  
22 prosecuted and they were guilty. They all did something wrong  
23 but it was a systemic failing.

24 And I don't really understand what we gain as a  
25 society by denying that part also. It seems to me that that's



1 just part of the whole picture here. And it is -- I think it's  
2 an important part to understand how someone like him did  
3 something like this or started off doing something like this.

4 Now in 2007, 2008, the market crashed and it was a  
5 rude awakening. And that is when the -- everything fell apart  
6 for Yehuda. His finances really fell apart. I know that there  
7 was a lot of money going through his accounts, but we have  
8 shown that he had tremendous debts. He was juggling things.  
9 He had other property he had also purchased and he was trying  
10 to keep things afloat.

11 On these two properties that he had taken false --  
12 had taken loans based on false statements, he went back to the  
13 banks and he did sales, short sales on them. And in those  
14 short sales, the bank lost money and that is what the losses  
15 are from here, and also the loss that they made on his mother's  
16 loan as well.

17 And at that time, he was bouncing checks as well,  
18 your Honor. I think that we have recovered that these were not  
19 false short sales. In fact, Yehuda lost money on this. These  
20 were not -- this was not a situation where he was putting up a  
21 straw borrower and putting money into pocket. This was a  
22 situation where he was really trying to make something work.

23 I'm not saying that that makes it okay. I'm saying I  
24 think it's less bad than the people who went out and just had  
25 straw borrowers and pocketed the whole mortgage money. He

1 didn't. He lost what he had invested in these properties,  
2 including his home and since then has been renting his home.

3 Now I want to address the 2013 wrongdoing because I  
4 agree with the government that that is a different time period  
5 and he wasn't so young anymore and he should have known better.  
6 And what I will say is this -- and I've asked him, I've spoken  
7 to him about this. He still didn't understand he had to be  
8 totally careful and truthful about everything. He thought this  
9 didn't matter. In a couple months, this will really be the  
10 rent. It was wrong. It is the least serious of all his  
11 criminal conduct.

12 The government says it is more serious. But if you  
13 did the guidelines calculation just on that loan, it would be  
14 less than six points. It is not a -- there was zero loss from  
15 it. So it would be seven points base offense level. It  
16 doesn't get up to a million dollars borrowed and you would have  
17 the two points subtracted for acceptance of responsibility, it  
18 would be five points. It is something that we do not, as a  
19 society or in the guidelines, consider the most serious crime.  
20 It's a crime. I'm not trying to justify it. I'm just saying  
21 it was far less serious than what he had done earlier, but  
22 still wrong.

23 I would also say the bank, as far as I know, is now  
24 aware of the false statements on this. They've been  
25 subpoenaed. There have been liens placed on many of these

1 properties. The bank is aware of this loan and they've never  
2 called this loan. They are not interested in making it into a  
3 nonperforming loan, and they're fine with it continuing as it  
4 is. So, yes, this was wrong conduct, but it is not normally  
5 the kind of wrong conduct that we send people to jail with.

6           So I want to address finally what has occurred since  
7 Yehuda's arrest because, again, it's an unusual case because of  
8 the length that this case has been pending, length of time.  
9 And I submit that Yehuda really has made a remarkable  
10 turnaround in his life.

11           One, I've never seen someone turn things around as  
12 much as he has here. After his arrest, he realized he needed  
13 to start doing something entirely new and he did, in fact,  
14 start a new business with his friend, Joel Lowy, who is in  
15 court here today.

16           And the government in its submissions says well, he  
17 has the resources. He is a very fortunate person. He has the  
18 resources to do so. It's not true that he came from a wealthy  
19 family. He did not grow up with those kind of resources. I am  
20 surprised that the government put that résumé of his father in  
21 the sentencing submission. I believe that they will argue at  
22 his father's sentencing that it was a false document and it  
23 shows the falsity of what his father was saying. He -- and I  
24 believe it is not a truthful document. Yehuda was not working  
25 for his father. In fact, at the time the document was

1 submitted, he was 19 or 20.

2 In any case, to start the new business, his friend  
3 Joel Lowy had assets and was able to put up money. But Yehuda  
4 did have resources and those resources are that he's smart,  
5 he's very engaging, very caring and very careful. He is able  
6 to put things together and organize things just like you've  
7 seen him be able to organize help for so many people in his  
8 life. He was able to organize a very paper-intensive business  
9 and a business where Yehuda had to run around, get business and  
10 then make sure the jobs are where the tests are being done  
11 right, everything is being done right. And he did this, he and  
12 Joel Lowy. And they built this business up to 39 people,  
13 employees I believe it is at this point.

14 And, your Honor, I think that this case raises the  
15 issue and forces us to confront the issue of the question of do  
16 we believe in rehabilitation.

17 THE COURT: Can I just ask one quick factual  
18 question?

19 MS. NECHELES: Sure.

20 THE COURT: So the government has all these charts  
21 that you saw on exhibits and one of the recipients of the money  
22 is somebody named Morris Lowy. Do you know if he has any  
23 relation to Joel Lowy?

24 MS. NECHELES: I don't know. I know that Morris Lowy  
25 is, as we mention in our papers, is a hard money lender in the

1 community. He lends money.

2 THE COURT: All right. I just didn't know.

3 MS. NECHELES: I don't know.

4 THE COURT: I don't know who knows who in this case.  
5 I didn't mean to interrupt. You can return with "do we believe  
6 in rehabilitation."

7 MS. NECHELES: Yes, do we believe in rehabilitation.

8 Can someone who has so changed their life and so done  
9 something new, can they -- should they get credit for it? Is  
10 it something we should give value to and think, yes, this  
11 person could be a new person. And if we do believe in it, is  
12 it right to throw everything away? Because I submit, your  
13 Honor, that a three-year sentence or the kind of -- a guideline  
14 sentence here would cause the business to evaporate.

15 And, your Honor, I would ask that one of his  
16 employees, the office administrator, who I've spoken to in the  
17 back who wrote a letter, but who asked if she could speak at  
18 court, be allowed to speak to tell you Honor a little bit about  
19 this business and what she believes would happen.

20 THE COURT: Okay.

21 Any objection from the government?

22 MR. ALLEE: At present, no position on that, your  
23 Honor.

24 THE COURT: Okay. It's not normally the case, but  
25 I'll hear from this individual. Thank you, Ms. Necheles.

1 JESSICA RYAN: Good afternoon, your Honor.

2 THE COURT: Good afternoon.

3 JESSICA RYAN: Thank you for allowing me the  
4 opportunity to speak.

5 THE COURT: If you could just state your name for the  
6 record, please.

7 JESSICA RYAN: My name is Jessica Futrell Ryan. I'm  
8 the administrator for Big Apple Testing, which is Jay and Joe  
9 Low's company. "Jay" is what we call Yehuda Rubin in the  
10 office.

11 THE COURT: Okay.

12 JESSICA RYAN: I began working for Big Apple Testing  
13 in March of this year. Prior to this, I've worked in an  
14 administrative capacity in my whole career.

15 I lost my husband in 2015 and I took a year off from  
16 work to grieve and put back the pieces of my life. When it was  
17 time to reenter the work force, it was harder than I could have  
18 ever imagined. Employers weren't interested in giving a widow  
19 of 40 a shot. It was disheartening to say the least.

20 And then I interviewed with Jay and Joel at Big  
21 Apple. They weren't just understanding; they were supportive.  
22 For them, staying at home and caring for your family, taking  
23 time to heal, it wasn't a deficit, it's a strength that should  
24 be lauded.

25 Originally, I was hired to be the bookkeeper. But

1 since I'm an all-in kind of person who doesn't wait for  
2 instruction. Jay and Joel quickly took notice and proceeded to  
3 give me more and more responsibilities, both big and small,  
4 which is much needed in a small but growing company.

5 They know they can rely on me day or night to be  
6 there for them, for the company, just as I know -- just as I  
7 know I can count on them to be there for the employees and  
8 myself.

9 When I started in March, we had a staff of less than  
10 20 employees. We now employ over 30 people with a weekly  
11 payroll of approximately \$40,000 and we're still growing. Big  
12 Apple Testing is a construction special inspection firm with  
13 our focus in soil testing, special inspection and monitoring.  
14 This means we're involved in all the separate phases of  
15 projects from design of the foundation, to DOB compliance  
16 during construction and monitoring neighboring structures for  
17 damage as the construction is ongoing.

18 Jay is our Chief Operating Officer. He's the person  
19 who brings in new business and keeps our current clients happy.  
20 And the retention in the construction industry is very  
21 important because there's so many different phases to a  
22 project. The client can always choose to hire another company.  
23 And I'm very proud to say that I have yet to hear of that  
24 happening at Big Apple.

25 Often clients want to speak with Jay because, much

1 like myself, they know they can depend upon him. Jay works  
2 from 6:00 in the morning to very late at night. Before he even  
3 gets in the office, he's on calls and emails. He's stopping by  
4 job sites and meeting with clients. He's frequently in the  
5 office past 7:00 p.m. when I leave. Other evenings he's out  
6 entertaining clients and building up the business, often not  
7 getting home past 10:00 p.m.

8           We're very by-the-book and adhere to the DOB strict  
9 guidelines. I have to say that Jay is definitely the driving  
10 force behind that. Our main priority is safety first, always.  
11 Our special inspectors are ACI certified level two, as well as  
12 OSHA for safety, as are all of our field technicians.

13           Jay, along with our PE, are always first to point out  
14 shortfalls to clients and if necessary will go out in the field  
15 to correct any oversights.

16           Big Apple isn't just a great place to work, your  
17 Honor, but we're a family. And recently when one of our  
18 employees was hospitalized for a week, it was Jay who's on the  
19 phone with her every day. It was Jay who started our yearly  
20 tradition of giving turkeys to all of the employees on  
21 Thanksgiving, who always encourages all our of charitable  
22 efforts from raising money for hurricane relief, our camp food  
23 drive that we're currently running, to the toy drives we'll  
24 soon begin. Jay never mentions it, but since I'm the  
25 bookkeeper as well as his assistant, I know that he gives



1 generously of his time as well as his money to many charitable  
2 causes outside of the office.

3 I asked to be able to speak today at sentencing not  
4 just on behalf of Jay, whom I know to be a wonderful, caring,  
5 thoughtful person who gravely regrets what he's done in the  
6 past, but for the over 30 men and women we employ from all over  
7 the world as far as Africa, from every race and religion. We  
8 are Christian, Muslim, Sikh, Jewish, or as they call us, the  
9 rainbow coalition of the concrete industry.

10 These people need their jobs, Your Honor. We're all  
11 just working people with families to support. And I know  
12 without Jay, that would not be possible. Not only would we not  
13 be able to keep moving forward, but I would almost immediately  
14 have to lay off half the staff, eventually myself included.

15 So I'm here today speaking on behalf of all of us and  
16 hope you will have mercy on Jay because the man I know is  
17 honest, law abiding, who does so much for others daily, not  
18 just by employing us, by also being our friend. And I beg that  
19 you continue to let him do so.

20 THE COURT: Take your time.

21 JESSICA RYAN: Thank you.

22 On one other note, your Honor, I've also been  
23 privileged to spend time with, Rachel, Jay's wife, on quite a  
24 few occasions. I had this written down but I don't know why --  
25 and I know from firsthand experience how absolutely devastated

1 she will be to lose just one moment with her husband, because  
2 when they look at each other they look at each other the way my  
3 husband and I did.

4 Thank you for your time.

5 THE COURT: All right. Thank you. That was a  
6 well-done speech.

7 JESSICA RYAN: Thank you.

8 MS. NECHELES: So, your Honor, the sentence that we  
9 have asked and that we propose is a sentence that would --  
10 Yehuda would be sentenced to a halfway house. That is  
11 incarceration, your Honor. And I've spoken to people who have  
12 been there and it is not a nice place to be, it's not as nice a  
13 place as a camp. It's not a easy place to be. But it would  
14 allow him to work and be out of the house. And we ask for a  
15 sentence of a year, and we do so knowing that probation asked  
16 for a lesser -- or suggested, recommended a sentence of a year  
17 and a day. And this would be 50 percent more than a year and a  
18 day because he would not get credit off because you don't get  
19 credit.

20 And we also have proposed some community service.  
21 And that proposal is the proposal that came from Olive, the  
22 Olive organization. The Olive organization is an organization  
23 that I have worked with for over 30 years, Your Honor. It is  
24 an organization that as you can see in the submission that they  
25 put -- that many many judges have recognized. I've worked with

1   them often in the eastern district with many different judges,  
2   Judge Weinstein, Judge Trager. Many of the judges there have  
3   recognized Olive.

4               I know that the other day, they were meeting with the  
5   chief judge in the eastern district who was excited with  
6   working with them. They have often supervised and suggested  
7   community service-types of programs and helps me to craft those  
8   programs for people. That's not their main focus. Their main  
9   focus is they work in the prisons. They work with helping  
10  people through the process. They work with families and they  
11  work on education of people in the Hasidic communities to try  
12  to help people understand that lying is cheating and you cannot  
13  do it. And I think they've been very successful in the  
14  communities that they've worked with and in helping people  
15  through this process.

16             One of the Rabbis is here today in court, should your  
17  Honor have any questions of him, and would also be willing to  
18  speak with your Honor about their proposals involving the work  
19  that they have done in the past.

20             Your Honor, I believe that there is a stark question  
21  before Your Honor and that is, does it make sense at this point  
22  to send Mr. Rubin to jail? Does it make sense to destroy this  
23  company in which -- it would be him destroying it. He's the  
24  one who committed the crime and who did this stuff, and I  
25  understand that and he understands that.

1           But I also understand that in a very real sense it  
2 will hurt many, many, many other people. The collateral  
3 consequences will continue to spread. And I believe, knowing  
4 Yehuda Rubin, that when he -- if he were sent to jail and for a  
5 guideline sentence, when he gets out, he will pick up the  
6 pieces and he will rebuild because that is who he is. I've  
7 seen him do it. And he was able to do it. But I don't know  
8 that these 39 other people will have such an easy time of it.  
9 I don't know that they will be able to so quickly pick up the  
10 pieces from their destroyed jobs and from their loss place.  
11 And does it make sense here to make these people lose their  
12 jobs? Do we believe in rehabilitation? Do we think that  
13 someone who has been slapped down in the way that Yehuda was,  
14 do we think that they can learn from their mistakes?

15           THE COURT: What happens to the business if Mr. Rubin  
16 is in a halfway house?

17           MS. NECHELES: He will be able to work during the  
18 daytime, your Honor, and will be able to continue -- the main  
19 thing is, can they continue to get clients. The jobs end and  
20 they -- he will be able to go out during the day and work at  
21 the business and he will spend the evenings and weekends at the  
22 halfway house.

23           THE COURT: Okay.

24           MS. NECHELES: Your Honor, so we ask for a sentence  
25 that would be a sentence that would contain the punishment of a

1 halfway house incarceration, restitution, order of restitution.  
2 If there is restitution, I haven't seen any numbers proposed  
3 here of what the restitution are for.

4 We -- your Honor, I would say one more thing with  
5 respect to the restitution and forfeiture. I tried to discuss  
6 this a number of times before with Mr. Allee and was  
7 unsuccessful.

8 We also tried, actually, trying to figure out how to  
9 get the deeds. There are a couple of deeds, all of which I  
10 think are forged, on the property which his mother took out  
11 the -- or bought and then took out a mortgage on. And so we  
12 met with some people trying to figure out could we buy up some  
13 of these deeds and then be able to have the bank settle it, you  
14 know, because the bank -- actually, there is property that is  
15 worth more than the actual amount of the loan. The bank at the  
16 end of the day will be satisfied. They have to do the  
17 litigation and I don't know why they haven't done the  
18 litigation in the 12 years that have passed.

19 They have to sue the people. There's two different  
20 deeds. They have to sue the people with the deeds and get  
21 those deeds settled. We were hoping we would be able to do it.  
22 We knew who owns the other deed. We were unable to bring them  
23 to the table. It's going to take litigation.

24 So we have given some effort to this, you know, and  
25 we don't even know what banks hold the paper at this point in

1 order to be able to do any restitution until there is a  
2 restitution order here. Because the banks were all selling  
3 the -- you know, would sell the loans and I don't know who at  
4 this point is responsible for the loans to be able to do a  
5 restitution.

6 But Yehuda understands this is his responsibility and  
7 he will have to be paying back restitution and whatever  
8 forfeiture there is. And we have proposed a community -- some  
9 sort of community service part of this as well.

10 Thank you, your Honor.

11 THE COURT: Thank you very much, Ms. Necheles.

12 And for you, Ms. Cassidy, I want to thank you for a  
13 very helpful and thorough and frankly very well put together  
14 sentencing memorandum with all the exhibits. I know how much  
15 work goes into a product like that and so I thank you both for  
16 your efforts.

17 MS. NECHELES: Thank you.

18 THE COURT: Mr. Allee?

19 MR. ALLEE: Thank you, your Honor. This is a  
20 sentencing of the defendant, Yehuda Rubin, for a serious  
21 federal crime. He's pleaded guilty to conspiring with others  
22 to make false statements to lenders, to lie to lenders in order  
23 to get money for themselves.

24 As with any other sentencing before your Honor, your  
25 Honor, Ms.~Necheles pointed out in some many sentencings, that

1 means this is a somber choice for the Court. As we see it, the  
2 choice for the Court is not whether to send Yehuda Rubin to  
3 prison, the choice is for how long to send Yehuda Rubin to  
4 prison in order to impose a sentence that's sufficient but not  
5 greater than necessary to achieve the aims of sentencing.

6 The defense argues for a sentence of one year in a  
7 halfway house. That would be an insufficient sentence. Our  
8 position is a sentence within the guidelines range, which here  
9 is 27 months to 33 months, would be sufficient but not greater  
10 than necessary to achieve the aims of sentencing.

11 The first factor for your Honor to consider, of  
12 course, is the nature and the circumstances of the offense.  
13 That's the first aim of sentencing, is to impose a sentence  
14 that meets those -- meets the nature and circumstances of the  
15 offense and is commensurate with that.

16 The defendant pleaded guilty to, in particular,  
17 fraudulently obtained loans on four properties. The properties  
18 were in Brooklyn. Three of them were in Brooklyn and one was  
19 the defendant's home, which is in Orange County. The lies that  
20 were made to obtain the loans connected to those properties had  
21 to do with employment, with income, with primary residency and  
22 with tenancy with tenants.

23 The first of the properties, the first of the loan --  
24 the property connected to the first of the loans was 418  
25 Lafayette. That's in Brooklyn. The borrower there was the

1 defendant's mother. The loan application, which the  
2 defendant -- for which the defendant is ultimately the mortgage  
3 broker, claimed that the borrower had a particular bank account  
4 that was false. The borrower didn't have that bank account but  
5 claimed that the borrower had particular employment as the  
6 owner of a company called Tri-State Management at a lucrative  
7 salary. That was false. That was just a paper company. The  
8 borrower didn't have that title and didn't have any income, let  
9 alone that lucrative income. That loan was issued by the bank  
10 that, thereafter, went into default.

11 The second property --

12 THE COURT: When did it go into default?

13 MR. ALLEE: So, your Honor, I can give you just -- I  
14 believe the answer is 2008, but there's a lot of loans and  
15 dates so I'd probably want to look at my notes to confirm that.  
16 But I believe it's in 2008 that the loan is in default.

17 THE COURT: Okay.

18 MR. ALLEE: Also that question, your Honor, is  
19 actually -- it's a broader question than it seems because -- or  
20 it might be a broader question it seems because there's  
21 default, which is just the first nonpayment. But then there's  
22 a series of events that happened after that that can be -- that  
23 can cure the default or can make, you know, can be -- that  
24 precede an ultimate foreclosure.

25 The next property was 5 Kosnitz. That's the property



1 up in Orange County, your Honor. The borrower there, that's  
2 the defendant's wife, that's Rachel Rubin. There are lies in  
3 that application and then a series of applications having to do  
4 with her employment and her income. It was actually the same  
5 company, Tri-State Management, that was used to pretend that  
6 she was not judgment proof. It was claimed that she was the  
7 owner of that company, had a substantial income. That was  
8 totally false.

9 That loan was issued. That loan went into default.  
10 There was a short sale at the back end of that extinguishing  
11 the debt at a substantial discount, and the defendant remains  
12 living there at that home to this day. He claims that he pays  
13 rent there and that he pays it in cash, according to the reply  
14 submission.

15 The next property, the 119-121 Hart Street, multiple  
16 lies there. Actually it's Yehuda Rubin who's the borrower  
17 there. He claimed \$36,000 a month in income which was inflated  
18 and false. And he claimed that that would be his primary  
19 residence, which was never the case. That was never going to  
20 be his primary residence. That's, of course, meaningful to a  
21 lender because you can get different terms, and there's a  
22 different underwriting analysis. It's a different risk when  
23 it's a primary resident who's seeking a loan as opposed to an  
24 investor. That loan also went into default and the debt was  
25 extinguished, was ultimately extinguished.

1           The last loan is 35 Vernon. That's the more recent  
2       conduct, 2013. The borrower there and the purported landlord  
3       for that building is the defendant's brother-in-law, Joel  
4       Koppel, who's a co-defendant in this case who awaits  
5       sentencing, submitted with that application in addition to just  
6       the notion that Koppel was the real landlord, when the best  
7       that could be said is that he was nominally the landlord. And  
8       there should be no mistake about this, were forgeries, were  
9       forged documents. They're actually on another property or  
10      purported to be related to another property which is 115 Hart  
11      Street, which is -- which is also relevant in this conspiracy.

12           And the forgeries were not merely that the rents were  
13      inflated or aspirational, but the tenant -- they were just  
14      tenant signatures that were not their signatures. One of them  
15      was an actual tenant and the other was not. It was just a name  
16      plucked from a totally other random place and then put in  
17      there. It was a surprise to those people when law enforcement  
18      contacted them in connection with this case.

19           And just incidentally, not only is just the raw  
20      conduct of a forgery very serious and certainly arguably more  
21      serious than what happened on the prior loans, even though this  
22      didn't result in a loss, there would be a higher guidelines  
23      range for that crime were it aggravated identity theft, which  
24      it is. That's a mandatory two years.

25           But the guidelines -- Ms. Necheles is correct -- to

1 be lower because there's no default there, presumably because  
2 rents are being paid. Those crimes -- those aspects of this  
3 crime took place over eight years from 2006 up to 2013. It's  
4 more than a million dollars of fraud over those eight years.

5 As I mentioned, the defendant and others defaulted on  
6 the first three of those loans that caused substantial losses  
7 to the bank. As I also mentioned, the defendant and others  
8 sought and obtained short sales from the bank to extinguish the  
9 debts and in doing so blamed unfortunate financial  
10 circumstances.

11 The defendant's criminal conduct, it cannot be said  
12 was isolated. It was not aberrational. It was not the result  
13 of desperation. It was not triggered or aligned only to some  
14 unique set of circumstances. It was planned. It was  
15 purposeful. It took place over a long period of time and took  
16 a really lot of effort.

17 The defense's written submissions and exhibits, in  
18 our view, do not tell a true story of the crime of the  
19 defendant. The government's take is that the defendant  
20 acknowledges what he must but otherwise offers a series of  
21 excuses for his conduct, including today, making much of the  
22 financial crisis of 2008 as a factor at this sentencing. The  
23 financial crisis does absolutely nothing to excuse or even  
24 explain the defendant's conduct. The harm that ordinarily  
25 results when someone lies to a bank to get a loan, is precisely

1 the harm that happened here, non-repayment of the loan. That  
2 is a very foreseeable harm for this crime and that's the harm  
3 the defendant caused. That is not caused by the financial  
4 crisis.

5           Who was harmed by the financial crisis incidentally  
6 is honest, unsophisticated homeowners who were prayed upon to  
7 take out loans that they couldn't afford, including through the  
8 types of phone call Ms. Necheles referred to. They got loans  
9 that were too big for them. They incurred debts that were  
10 crushing to them. They ended up under water on their homes and  
11 they were not so fortunate to have friends or business  
12 associates come along and offer to pay in cash at a sufficient  
13 fraction of the debt for the bank to forgive that loan.

14           The nature and circumstance of the offense of course,  
15 Your Honor, have been disputed by the parties in the written  
16 submission. And, including today, there's some of the advocacy  
17 that we don't agree with. The accountant, of course it wasn't  
18 an accountant who put Yehuda Rubin up to this. Not only is  
19 this factually false, it also makes no sense at all. The  
20 accountant -- there's nothing in it for the accountant. Yehuda  
21 Rubin is the one who had already represented employment by his  
22 mother and his wife that was fictional, and it was after the  
23 fact that the verifications come in from the accountant. I  
24 mentioned forgeries. Our view of that conduct is that it's far  
25 more serious.

1           As for the one other item of note, and Ms. Necheles  
2 has mentioned it again, it's in the reply that she's surprised  
3 the government would rely on a representation of Irving Rubin,  
4 that's the defendant's father and co-defendant.

5           So firstly, she's right. We wouldn't rely on a  
6 representation of Irving Rubin as in a raw way. But we've  
7 examined bank records that -- of the bank accounts that ensued  
8 in the following years after that loan was issued, connected to  
9 the properties that are a part of that builder's bank  
10 development. And it is Yehuda Rubin who is the one who's  
11 operating those bank accounts. And so that's far afield from  
12 the sentencing.

13           We're not trying to argue about that loan or what  
14 happened on that. We're just trying to respond to the  
15 defense's submission to hopefully get the truth out. But we  
16 agree, just because Irving Rubin said Yehuda is the heir to the  
17 business doesn't really mean a whole lot. But when you look at  
18 the bank records, it looks like that's what happened. Yehuda  
19 Rubin is the one operating the bank accounts that were  
20 connected to those loans by the ensuing years.

21           There are also a lot of unverified or unverifiable  
22 representations in the defense's reply. Even today we're in a  
23 place in this case where we would want a lot of opportunity to  
24 take a hard look at those before we would ever ask or agree  
25 that the Court should rely on those.

1 THE COURT: For example?

2 MR. ALLEE: For example, the cash rent payments. So  
3 a letter came into the Court from Abraham Werzberger. It is a  
4 somewhat vague letter. It would give anyone who looked at a  
5 lot of loan applications in this case deja vu. It claims that,  
6 for some unspecified time period, Yehuda Rubin paid rent in  
7 cash. Maybe that's true; maybe it's not. We looked at the  
8 bank records and saw one check payment which was previously  
9 cited to us as evidence of rental payments.

10 We would want things under oath. We want documents.  
11 We want a whole lot more information that could be verified  
12 before we would join with the defense in suggesting that  
13 representation could be relied upon. The PSR is a place where  
14 sometimes that can be fleshed out, but it's not in there. So  
15 that's our response to that.

16 The second aim of sentencing is the history and  
17 characteristics of the defendant, to impose a sentence that  
18 accounts for that. The defendant is in Criminal History  
19 Category II. He has a prior conviction for grand larceny,  
20 which was in Orange County, for which he served no prison time.  
21 The crime in this case, the incident crime, both predated and  
22 postdated that as Ms. Necheles mentioned. Some of that  
23 within -- some of the crime here goes back to '06. And then it  
24 extends -- or the last of it was in '13, whereas that prior  
25 conviction dates to 2010, I believe.

1           The defendant, in terms of history and  
2 characteristics is, of course, a father and he's, of course, a  
3 husband. And in the letter submitted on his behalf, it's clear  
4 that he's done good deeds. He's done them for his family.  
5 He's done them for his friends. And he now runs a successful  
6 business, which he's begun or which has taken off during the  
7 pendency of this case which employs approximately 30 employees.  
8 The Court, of course, should consider this and can consider  
9 that factor in imposing sentence.

10           There are a couple of things that we want to note  
11 about that. We, of course, don't take issue with all of it.  
12 But it brings up a couple of points:

13           First, it's been claimed that the defendant can't be  
14 sentenced to a term of imprisonment because the loss of him  
15 would be too great in these other contexts. That's surely  
16 meant sincerely by the people who expressed that concern. The  
17 defendant, however, is no more unique in that regard than other  
18 defendants who have been sentenced by this Court.

19           In his business, he has a partner. He has 30  
20 employees who can fill the void. More than most defendants, he  
21 enjoys continuing support from family and friends who surely  
22 will step up in his absence. The defendant is better off in  
23 this regard than many other defendants who have been here to be  
24 sentenced, who face sentencing. People who are solo  
25 practitioners, people who are solo business owners, people who

1 are licensees who risk the loss of their entire livelihood, the  
2 loss of their license, and single mothers and fathers without  
3 enjoying the extensive family support and other support that  
4 Yehuda Rubin has.

5           We also want to note that the person who is depicted  
6 in the letters, and Yehuda Rubin is depicted in the letters  
7 that are attached to this sentencing submission, is not the  
8 same person who is depicted in the briefing itself. It's been  
9 argued that the defendant committed the crime because he was  
10 young, because he failed to appreciate in some way the  
11 wrongfulness of what he was doing.

12           But those who support the defendant, who wrote  
13 letters, described him as having served as a life coach, as a  
14 mentor, as a confidant and, generally, as someone with a strong  
15 personal sense of goodness or of right and wrong. It's very  
16 hard to imagine that person, who's depicted in the letters,  
17 committing the crime the defendant committed just because he  
18 was in his 20s.

19           Even today, he's been described as someone smart and  
20 competent, organized and very careful. We know he started up  
21 this business that he currently runs from scratch. That's not  
22 someone who was swayed into this crime through a youthful  
23 indiscretion, the government submits.

24           There's also, as an aim of sentencing, the need to  
25 reflect the seriousness of the offense, to promote respect for



1 the law and provide just punishment. For some of the reasons  
2 we've already laid out, we think that a guideline sentence  
3 would meet those aims.

4 And if the question is: Does it make sense to send  
5 the defendant to jail, the answer is yes. Yes, it does make  
6 sense to send him to jail. It's not a happy thought. It's a  
7 very somber thought, but that is just punishment. It wouldn't  
8 be the choice of anyone else in this room were it a raw choice,  
9 but it is the consequence of the defendant's choices. That is  
10 the need to promote respect for the law. That is what just  
11 punishment is. It's not a happy thing to send someone to  
12 prison. It is a necessary thing to impose a sentence that's  
13 commensurate with their offense.

14 Deterrence is also an issue, both general and  
15 specific. In terms of general deterrence, a sentence here will  
16 send a message whatever the sentence is, your Honor. The  
17 message should be that this crime, lying to banks for years to  
18 defraud them of more than a million dollars, does not pay. The  
19 message should not be that, in the worst case scenario, if you  
20 do that and you get caught you go to a halfway house for a  
21 year. A person could look at that and actually rationally  
22 engage in that crime. That's how disproportionate a sentence  
23 is being sought by the defense.

24 The last aim, or any last aim of sentencing, is the  
25 need to avoid unwarranted sentencing disparities, your Honor.

1 This, of course, is the second sentencing in this case, the  
2 second of 12 sentencings that will be before your Honor.

3 The first defendant to be sentenced was Pinchus  
4 Glauber. He was sentenced to two years probation. He was the  
5 appraiser. A couple of things about that, your Honor:

6 The first is that Yehuda Rubin is the most culpable  
7 defendant in the case. There are other defendants who did bad  
8 things who will face serious sentences. And maybe there's some  
9 things sort of arguable at the margins, but this is the highest  
10 guidelines range in a plea agreement in this case, your Honor.  
11 And I expect you'll hear ten time after this sentencing that  
12 the person before you is not as culpable as Yehuda Rubin.

13 The government's position we anticipate, and we've  
14 gotten most of the PSRs, and we can pretty firmly tell the  
15 Court is that we firmly believe the guideline sentence for  
16 every defendant in this case would be an appropriate sentence  
17 and would be necessary to achieve the aims of sentencing.

18 This defendant, Yehuda Rubin, was a core member of  
19 the conspiracy. He participated in multiple fraudulent loans  
20 over a course of several years and he did so for the benefit of  
21 himself and his family and others.

22 Lastly, your Honor, just on the other types of  
23 penalties, there are a few other penalties in play here.

24 As to forfeiture, we have an agreement and consent  
25 order of forfeiture, which I can hand up at the conclusion of

1 sentencing. It's an agreed-upon figure of \$1,219,000.

2 THE COURT: Say it again, 1 million?

3 MR. ALLEE: \$1,219,000, which is a number agreed upon  
4 by both sides.

5 As to restitution, we don't have a position to  
6 advocate to Your Honor. We're not sure whether the victim  
7 seeks restitution, number one.

8 Number two, as has been pointed out to us by the  
9 defense, there's some -- it is somewhat true that restitution  
10 is double counting when the gains and the losses are the same.  
11 And so the presence of forfeiture, they matter there.

12 We would ask for additional time that can be up to 90  
13 days for us to fully vet that with the victim, whether they  
14 seek restitution and what amount and whether that amount is  
15 fair and justified. So we don't have a position on restitution  
16 yet.

17 A fine here would be appropriate, your Honor, for  
18 reasons we've articulated in our brief, a fine within the  
19 guidelines range.

20 And as to community service, we saw the submission  
21 that came in, the final submission from the defense from the  
22 third party. And our view is simply community service is fine  
23 but not to replace the other aspects of sentencing. We saw  
24 nothing persuasive in that submission that would run contrary  
25 to the rest of our advocacy. Community service could be an

1 additional penalty, but not to replace the others.

2 Unless your Honor has questions, we'll otherwise rest  
3 on our submission.

4 THE COURT: Did you have an answer to the question  
5 about the potential familial connection?

6 MR. ALLEE: So there's just a lot of facts in this  
7 case. My understanding is that they are related but I just  
8 caution that, your Honor. I'm not entirely certain of that.  
9 Of course we think the defense should be able to readily answer  
10 that. I can answer that with little time. I can look into it  
11 further. But I can only tell you now I think they are related.

12 THE COURT: Okay, thank you very much.

13 MS. NECHELES: Just a couple of things. I want to  
14 start with the short sale on -- just couple of facts that I  
15 think the government does not have right with respect to the  
16 short sale on Mr. Rubin's home and the letter from  
17 Mr. Werzberger, who was the landlord, saying he received cash.

18 THE COURT: Yes.

19 MS. NECHELES: Mr. Werzberger has been interviewed by  
20 the FBI, I think, on more than one occasion and at least this  
21 is what he tells me. He says I've told the FBI repeatedly I  
22 received rent on this property. And he says in his letter that  
23 he receives rent in cash. The government had it wrong that  
24 money went back to this Mr. Werzberger. It is clearly a  
25 different Mr. Werzberger who lives in Brooklyn. It's right on

1 the bank account statement where it says where the money is  
2 wired to and where that other Mr. Werzberger lived. In  
3 addition, Mr. Werzberger says he puts this money -- or he pays  
4 taxes on this money. I don't know why he would lie about that.

5 Your Honor, when the government says they would not  
6 rely on this letter and it's not in the PSR, we're only  
7 responding to an allegation the government made. This is not  
8 the crime charged. We were saying, no, it's not another crime  
9 that Mr. Rubin committed. Of course it's not in the PSR. It's  
10 not a crime in this case. The government made this allegation  
11 and now they say we haven't disproved it sufficiently. That  
12 really is not the standard.

13 The second issue is the first loan and the  
14 accountant. The first loan that is charged in this case is 418  
15 Lafayette. 418 Lafayette, Mr. Rubin didn't put this loan  
16 together. He didn't make those statements on it. He's never  
17 said he made a statement. I'm surprised to hear the government  
18 say he made a misstatement. It wasn't a loan for him. It was  
19 a loan for his parents. His parents had gotten loans in the  
20 past. He did not put in -- we pled guilty to it because he did  
21 submit this mortgage application knowing it was false. But  
22 he's not the one who went to the accountant. He's not the one  
23 who asked for this letter to be written. This accountant was  
24 an accountant for his father and other people for many, many  
25 years.

1           The Builders Bank bank account statements that the  
2 government speaks about, many years later Mr. Rubin took over  
3 those. Many years after this loan, the loan proceeds were all  
4 gone, has nothing to do with this loan. It was many years  
5 later. It's sort of miching and mashing everything together  
6 that are totally separate. It has nothing do with this loan.  
7 The money here went to other places.

8           My understanding is that Morris Lowy was a -- and I  
9 don't know whether it's related. It could be, but I also know  
10 that name from many places. Morris Lowy was a hard money  
11 lender who had lent money to the father and then also later  
12 lent money to Mr. Rubin as well.

13           Whether the business -- whether his business will  
14 fall apart, the government argues here that someone else can  
15 step up. There are 30 employees. Your Honor, people have  
16 different strengths. In my law firm, if I were to walk away,  
17 there's not many other people who are bringing in business.  
18 Different people bring in business and you do it at different  
19 stages in your life. There is nobody else who is bringing in  
20 business at this business at this point in time. And if new  
21 business doesn't come in, the business will shut down. And  
22 you've heard Ms. Futrell talk about that. I don't think she  
23 was lying when she said that. Mr. Rubin is the person who is  
24 bringing in business here.

25           Now with respect to deterrence, the government says

1 that a sentence of community service here would send a message  
2 to the community that is no big deal. You can commit a crime  
3 and no big deal. I do not believe that there is anybody who  
4 thinks that what happened to the Rubin family is not a big  
5 deal.

6 Numerous people in this family were arrested.  
7 Together they've spent millions of dollars on legal fees. They  
8 will spend millions of dollars more on forfeiture and  
9 restitution. Their children saw their parents being arrested  
10 and guns pointed at their parents. They are -- they are now  
11 going to go to a halfway house. This is not an easy thing.  
12 Their whole lives have been uprooted.

13 Your Honor, this is -- I am not saying it's anybody's  
14 fault but their own. But this is certainly punishment to them  
15 and a punishment that people in the community have seen. I had  
16 many people in the community -- I have met with many people who  
17 have -- women who have expressed to me, I don't want to be on  
18 documents signed by my husband. I don't want to happen in my  
19 life what happened in the Rubins family.

20 People know about this case very well. It was -- it  
21 sent a big shock wave through the community. There is a lot of  
22 deterrence from what happened here. It was a big deal to  
23 arrest his mother, his father, his aunts and uncles, his wife.  
24 All of these people were taken out of the house, even though we  
25 had asked -- we had called repeatedly and asked to be able to

1 surrender so they wouldn't be arrested in front of their  
2 children. The government said no.

3 That is a -- as is their right -- that was, your  
4 Honor, I submit, a big deterrence. I cannot imagine anybody  
5 saying this is not a big deal what happened to this family.  
6 Thank you.

7 THE COURT: Thank you very much, Ms. Necheles.

8 Mr. Rubin, is there anything you'd like to say before  
9 the Court imposes a sentence?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Just make sure you speak near a  
12 microphone.

13 THE DEFENDANT: Your Honor, I'm not a very good  
14 speaker but I wanted to say a few words today. I had three  
15 years to think about my conduct and why I'm standing here  
16 today. I thought about --

17 (Reporter interruption.)

18 THE COURT: If you could just slow down a little bit.  
19 I know that you're nervous but take your time.

20 THE DEFENDANT: I've thought a lot about falsifying  
21 applications that I submitted to the banks. I know it was  
22 wrong and at the time I justified my conduct.

23 I believed my lies didn't matter and I can make  
24 everything work was wrong and arrogant. I caused banks to lose  
25 hundreds of thousands of dollars. I can't blame anyone except



1 myself. I know that this was my fault and I know it's my  
2 responsibility to pay it back. I hurt a lot of people with my  
3 conduct. I've hurt my wife, who was arrested because of me.  
4 I've hurt my children on that morning when all these FBI agents  
5 came into our home and saw me and my wife arrested, handcuffed  
6 and taken away. I hurt all of my employees because my company  
7 is now in danger to close for what I did wrong.

8 I particularly wanted to apologize to my wife and  
9 kids. My wife had a terrible childhood and she trusted me to  
10 keep her safe and I betrayed her trust and she's suffering more  
11 because of that.

12 The last three years, I've spent a lot of time  
13 speaking with my attorneys, my new accountant who helped me  
14 file my tax returns, my wife, my business partner, the advice  
15 from Olive, and my early Ramadan thinking about what I did  
16 wrong. I would not cheat my religion, my religious life. I've  
17 given a lot of thought. I understand now that to live up to my  
18 religious obligations and moral obligations to my family and my  
19 community I also need to be a good citizen.

20 I want to be able to hold my head high and to be able  
21 to sleep at night knowing that I will never, again, be charged  
22 in a criminal case. I want to teach my children to live in a  
23 way that will not lead them into trouble. And I need to be  
24 that, by example.

25 My arrest in this case was a big awakening. I was

1 29 years old when I was arrested. Most everything I was  
2 charged with happened almost ten years before when I was 20 or  
3 22.

4 And I also stupidly submitted false leases in 2013.  
5 I realized when I was arrested that I need to clean up my life  
6 and to be meticulous in the future. It's not okay to lie just  
7 because I tell myself it's not an important lie.

8 This is the way I have run my new business,  
9 meticulous honesty. I'm proud of the business that I've built  
10 with my partner. I'm particularly proud that I built it  
11 honestly. I understand that my conduct deserves a punishment  
12 but I ask your Honor for the sake of my wife and children and  
13 my employees that you should be as lenient as possible.

14 THE COURT: Okay. Thank you very much, Mr. Rubin.

15 All right. The Court's task is to determine what  
16 sentence is sufficient but no more than necessary to achieve  
17 the goals of the sentencing laws as they apply to Mr. Rubin and  
18 to his case.

19 To do that, I have considered all of the facts set  
20 forth in 18, U.S.C., Section 3553(a). In doing that, I have  
21 carefully considered the written submissions by the parties.  
22 It's been quite a hearty set of submissions, the most recent of  
23 which was made yesterday. But I've read them all, including  
24 the exhibits. I've also carefully considered what everybody  
25 has had to say here today including our guest speaker and also

1 Mr. Rubin in addition, of course, to what counsel has said.

2 Now in terms of the 3553(a) factors, we're told by  
3 the higher courts that the starting point is the guideline  
4 calculation. And that calculation is set forth without  
5 objection in the presentence report at paragraphs 56 through 70  
6 of the presentence report. The base offense level for  
7 violation of Section 371 is 2X1.1, and pursuant to 2X1.1(a),  
8 you're supposed to consult the guideline provision that  
9 addresses the substantive offense. And here it's making false  
10 statements to lenders and that is covered by Section 2B1.1.

11 Because the statutory maximum term for imprisonment  
12 here is five years, the base offense level is six, and that's  
13 pursuant to Section 2B1.1(a)(2). Because the loss amount was  
14 more than 550,000 but less than 1.5 million, there's a 14-level  
15 increase pursuant to Section 2B1.1(b)(1)(H).

16 That results in an adjusted offense level of 20, but  
17 three points come off because of Mr. Rubin's timely acceptance  
18 of responsibility as reflected in his guilty plea. And that's  
19 pursuant to Sections 3E1.1A and B.

20 Mr. Rubin finds himself in Criminal History Category  
21 II. That's because there's one point assessed from the  
22 July 2011 judgment of three years conditional discharge and two  
23 more points are assessed because Mr. Rubin committed the  
24 incident offense while serving that sentence. And that's  
25 pursuant to Section 4A1.1. So the two points added to the one

1 yield three criminal history points and that's why Mr. Rubin is  
2 in Criminal History Category II.

3 At a total offense level of 17 and a Criminal History  
4 Category of II, the guideline range is 27 to 33 months  
5 imprisonment. And the fine range is 5- to \$50,000. So that's  
6 the math.

7 And I agree with you, Ms. Necheles, I think that the  
8 starting point should really be the history and characteristics  
9 of the person being sentenced but at least I've done the math  
10 so that's where I want to start. And I accept completely the  
11 premise that the sentence of anybody is not to just focus on  
12 the criminal conduct. That's what Congress says, but common  
13 sense tells us that too. And of course we should look at the  
14 complete picture which, of course, includes looking at the  
15 entirety of the person being sentenced.

16 And much has been said. You know, Ms. Necheles  
17 talked a lot about Mr. Rubin's relationship with his wife  
18 Rachel and the circumstances that led to their marriage and how  
19 Mr. Rubin has stood by his wife as she has had to deal with  
20 many of her own challenges.

21 And then Ms. Necheles highlights what is clear from  
22 the letters when she said there are many people who have called  
23 upon Mr. Rubin or otherwise have benefited from his  
24 volunteerism in offering different levels of support or comfort  
25 or assistance. And whether it's caring for a four-year old or

1 whether it's providing assistance to, you know, a shocked  
2 husband who's wife has been given a very difficult diagnosis  
3 and helping that person navigate medical care to the anonymous  
4 donations which are now no longer anonymous, all of these  
5 letters speak to an individual who has given to others. And it  
6 is always the case, and I've always taken the view that it  
7 should be the case, that those are things that should be  
8 considered, because all things being equal the person who gives  
9 of his or her time, who donates, who contributes to the  
10 community in whatever way it is, should be treated differently  
11 than the person who doesn't do those things.

12 I also think that implicit in this is -- and it's  
13 obvious here with the turnout here in the courtroom which, of  
14 course, never makes its way onto a transcript, is that  
15 Mr. Rubin enjoys the support of his community. And that's  
16 important in any case because anybody who's facing a sentence  
17 faces challenges going forward regardless of what the sentence  
18 is. Whether it's probation, whether it's a halfway house,  
19 whether it's jail, dealing with a sentence is not an easy  
20 thing. It's nothing that people are trained for. It's nothing  
21 that is -- that comes lightly. And so having the support of  
22 one's family, of one's friends and one's work colleagues is  
23 important for the obvious benefit of the person being  
24 sentenced. But also, in terms of the system, it's important  
25 because it helps in terms of looking at the risk going forward.

1           To me, the most depressing and even difficult  
2 sentences are where the person being sentenced has no one in  
3 the back of the courtroom. And this is not really a case where  
4 I think recidivism is as much of a risk maybe as somebody with  
5 a Criminal History VI and that's a recipe for disaster, when  
6 someone has demonstrated a problem repeatedly breaking the law  
7 and there's no one in the back of the courtroom. Then again,  
8 all things being equal, that's a factor that probably does not  
9 help the person being sentenced.

10           Now, one of the sort of fault lines in this  
11 sentencing litigation, and there are many, which is what  
12 happens when you get excellent lawyers and give them time to  
13 write submissions, is the -- Ms. Rubin's age when he committed  
14 the offense conduct. And then there's the literature that  
15 counsel for Mr. Rubin cite in their submission.

16           And of course it's true that on average, people in  
17 their late teens, early 20s don't exercise the judgment that  
18 people who are older in life exercise. Just as it's the case  
19 of people who are in their 50s and beyond are less likely to  
20 repeat. I mean, there's plenty of literature. I'm sure you  
21 have it in your boilerplate ready to go, and I would too if I  
22 were you, Ms. Necheles. And that's all true and makes sense  
23 and the literature backs that up and so it is.

24           But these are generalizations. And just as there are  
25 people who commit crimes after the age of 55, I think

1 Mr. Allee's point was a fair one, which is that what the  
2 letters say about Mr. Rubin is someone who is older than his  
3 years and was at the time. Getting married at age 19 ages  
4 someone a lot quicker then someone who is not married at 19,  
5 because you have to take on responsibilities. You take on  
6 commitments that most 19-year olds, especially ones that aren't  
7 married, don't take on. It's contributing to the relationship  
8 which is hard work. It is providing for one's family. It  
9 is -- it involves a maturity that even if the person didn't  
10 have it at 19, they get it in a hurry.

11 But beyond that, the letters do speak to Mr. Rubin as  
12 someone who is -- I think Mr. Allee said, a life coach. And  
13 people call on him to be a mentor, to be a problem solver, to  
14 help navigate something as complex as medical care for someone  
15 with a very difficult brain tumor diagnosis, and taking care of  
16 a four-year old. The person who entrusts somebody else to take  
17 care of their four-year old doesn't think that the literature  
18 applies to that caregiver.

19 And, indeed, Ms. Necheles says several times about  
20 how smart Mr. Rubin is and how he is organized and he is  
21 competent and that is the secret behind Big Apple's success.  
22 And so I think in terms of -- it's hard to square the  
23 generalization with what the record says about Mr. Rubin, that  
24 he was far more savvy, far more mature, far more intelligent  
25 and competent and organized than your average 21-year old or

1 your average 22-year old. So I don't think that that's a  
2 factor that has as much significance in this case. Of course  
3 it can in other cases, but I don't think it's as significant in  
4 this case maybe as in other cases.

5 Plus, the conduct doesn't stop when Mr. Rubin's in  
6 his early 20s. And it may be that, of the four properties  
7 we're talking about, the one that's in play in 2013 is the  
8 least serious of the four, but it doesn't mean it's not  
9 serious. And also I think it speaks to -- not recidivism, but  
10 it speaks to whatever one was supposed to learn in one's early  
11 20s about committing fraud. Mr. Rubin didn't learn it. And  
12 maybe, as I said, it wasn't as serious but it was a first  
13 cousin of the things that he was doing earlier on in his life.

14 Moreover, I think that that's a factor that might  
15 play more significantly in a case that involves a momentary  
16 lapse of judgment. You know, there's plenty of people,  
17 Ms. Necheles, that you've represented who -- they're given a  
18 brief moment to make a choice. You know, if it's a gun, if  
19 it's a lie for me in this one instance. And maybe the average  
20 20-year old doesn't have the maturity or the brain development  
21 to make the right decision. This was -- I don't think there  
22 really can be much dispute about this -- this was -- this was a  
23 fraudulent scheme that required planning and work and that  
24 actually required some level of competence and organization.  
25 And it's not something that was done in a momentary lapse of



1 judgment by a kid.

2 If those were the facts, then this may be different.  
3 But here this was a scheme and sadly a scheme that involved  
4 Mr. Rubin's wife. I mean, she gets arrested because of this.  
5 And other family members are brought into the scheme that  
6 involved everything from lying about jobs, lying about income,  
7 lying about residence, to forgery.

8 And I hate to be so blunt, especially in a crowd of  
9 admirable supporters, but this is just thievery, plain and  
10 simple, and committed by someone who unfortunately used his  
11 talents to commit this fraud.

12 And I think Big Apple kind of cuts both ways because  
13 Big Apple proves that there was no need for this. This wasn't  
14 an act of desperation. This wasn't someone who felt like it  
15 was checkmate in life and this was his only play. Not at all.  
16 Big Apple proves that Big Apple could have happened years ago.  
17 And it's not an excuse that the market was tough. The market  
18 was tough on all kinds of people. And Ms. Necheles made the  
19 point that when the banks are calling up back in the last  
20 decade, borrow some more, borrow some more, she says I wouldn't  
21 have done it. And most people, the vast majority of people,  
22 certainly wouldn't accept the offer as an invitation to commit  
23 fraud. And I don't buy the argument that this was the system's  
24 fault.

25 The burglar who gets into the unlocked house doesn't

1 get to blame the owners of the house. And nobody here is going  
2 to cry for banks, I get that. But ultimately, the victims are  
3 the others who would borrow from the banks because guess who  
4 those costs get passed on to? So this isn't about sympathy for  
5 the banks. Yeah, the banks did lots of stupid things too. But  
6 that doesn't in any way, in my view -- not only does it not  
7 excuse the conduct -- Ms. Necheles doesn't offer it for that  
8 reason -- but I just don't think it's a substantial mitigating  
9 factor given the facts and circumstances of this case.

10           The other thing we didn't talk about much here today,  
11 but is in the papers, is this isn't Mr. Rubin's only offense  
12 conduct. And the check case, whatever it is, it's certainly  
13 not the crime of the century. And I'm even willing to accept  
14 the facts that are most favorable to Mr. Rubin. But I think  
15 the Criminal History Category II is appropriate, given those  
16 facts. And it's troubling because it's another example of  
17 Mr. Rubin committing fraud.

18           Now Mr. Rubin says well, I -- when I made these lies,  
19 I didn't think they were going to hurt. Then why make them?  
20 The reason for the lie is to fool somebody. That's the point  
21 of the lie. And you would know more want to lie to your wife,  
22 thinking she's not going to mind if I lie than you would want  
23 to lie to anybody in the financial transaction. The lesson is  
24 Big Apple is run by the books and is complying with every  
25 ethical and legal requirement; that it is -- that it's proof

1 that lying is bad. And it's always bad and there's no  
2 rationalization for it even accepting that that was the  
3 rationalization.

4           So, you know, every sentence is so hard and every  
5 sentence is so tragic because every issue has at least two  
6 sides to the story. You know, people who like to pontificate  
7 on sentencing never have to go through this. And there are a  
8 lot of good people in the back of the courtroom who are hurt by  
9 having to even be here. They wish -- they wish that none of  
10 this had happened and we could just start over. I don't think  
11 there's anybody who disagrees with that.

12           But in terms of looking at Mr. Rubin's personal  
13 history and characteristics is complicated to be sure. In  
14 looking at the seriousness of the offense conduct, I've talked  
15 about that. This was very serious conduct. This was stealing  
16 over a million dollars. That's the bottom line. And I don't  
17 need to get into the weeds about, you know, the short sale and  
18 Ms. Necheles -- the points that were made by her and  
19 Ms. Cassidy in the reply, which were compelling about some of  
20 the other circumstances, and whether or not the rent was paid  
21 in cash. Okay, I'll assume that it was and is being paid in  
22 cash. But it's still serious conduct.

23           In terms of another piece of the personal history and  
24 characteristics of the Rubin, there's Big Apple. And you know  
25 a lot of people obviously have benefited, customers and

1 employees alike have benefited and I think this is a  
2 significant factor. And I think a couple of things can be said  
3 about this.

4           There is a business partner. And it may very well be  
5 Mr. Rubin is the one who generates most of the business. And I  
6 don't pretend to be an expert on any business, let alone the  
7 kind of business that Big Apple does. But it sounds like there  
8 are a lot of very talented people who are working at this  
9 business. I'm assuming Mr. Lowy is not nothing. There are  
10 actually -- there are two people who are running this business.  
11 And this was a business that was started and it's been  
12 developed while Mr. Rubin had this case hanging over his head.  
13 He always knew that there was a possibility this day was  
14 coming. And I don't think it's fair to say that, you know, the  
15 sentence is what's going to be a big issue for the business.  
16 No, it's Mr. Rubin's conduct.

17           Mr. Lowy chose to go into business with somebody who  
18 presumably he knew. And there may be some possibility that he  
19 knows that Mr. Lowy was getting some of the money from some of  
20 these fraudulent loans. I don't know. I will assume not,  
21 they're not going to him. But I am going to assume that  
22 Mr. Lowy knew or had some reason to know that Mr. Rubin was  
23 facing these charges. After all, I'm told the whole community  
24 knows about what the Rubin family is going through. And good  
25 for Mr. Lowy for saying this was in his financial interest to

1 do, this business with Mr. Rubin.

2 But the flip side of it is -- and I don't think  
3 Ms. Necheles would argue it this way -- but just because  
4 someone is in business with somebody else, that's not an  
5 immunity card. That's a factor certainly under 3553(a). But  
6 it doesn't erase the fraud. It doesn't change the past. It's  
7 a factor. It's certainly a mitigating factor and I've  
8 considered it.

9 A couple of other things. Deterrence is an issue.  
10 And I agree with what Ms. Necheles says. The notion that the  
11 only form of deterrence is jail is not true. And I don't think  
12 Mr. Allee was arguing that, although I can understand why  
13 Mr. Necheles said what she said. And Justice Stevens talks  
14 about this, that probation itself is a very severe punishment.

15 And here the Rubin family has had to endure  
16 everything from the arrest in front of their children to the  
17 stigma of being in the community having to face these charges,  
18 to having to no doubt deal with the financial and resource  
19 challenges of defending one's self against these charges. And  
20 his own lawyers are asking for 12 months in a halfway house  
21 plus supervised release. So it's not as if this is nothing,  
22 what it is that counsel for Mr. Rubin are asking for and is not  
23 as if there isn't some term of fact.

24 The flip side of it is the government says Mr. Rubin  
25 is the most culpable person in this case in terms of his

1 involvement. And however it is that guidelines had calculated  
2 which, of course, isn't the final answer as to who's the most  
3 culpable person in the case, but at least I accept government's  
4 representation. Mr. Rubin is facing the highest guideline  
5 range of anybody who is to be sentenced in this case. And this  
6 speaks a little bit also to unwarranted disparity.

7 And I do think that general deterrence is a factor  
8 here. And to the extent that Ms. Necheles says, you know, the  
9 community is aware of what the Rubin family has gone through,  
10 they're going to be very aware of the sentence. And I do think  
11 there is a difference between a sentence that does not involve  
12 any jail time and a sentence that does involve jail time. It's  
13 a little harder to calculate the margin about how much -- how  
14 long this sentence should be. Is one year supervised release  
15 enough or two? There's a difference between zero and one and  
16 it's a greater difference than maybe the difference between one  
17 and two. And if there was an exact science, then sentencing  
18 would be easy. It's not, so it's not.

19 But I've certainly considered both the notion of  
20 deterrence and the need to avoid unwarranted disparity. And  
21 it's tricky in a case like this where the person the government  
22 says is the most culpable is the second person of 12 to be  
23 sentenced. We don't get to pick the order of sentences. And I  
24 don't know how many adjournments I've granted to all the other  
25 people in this case. I almost always grant them.

1           So where I come out on all of this after considering  
2 all of the 3553(a) factors that have been so ably argued by  
3 both sides, is that it is the judgment of the Court that  
4 Mr. Rubin be sentenced to the custody of the attorney general  
5 for a period of 18 months to be followed by two years of  
6 supervised release. I'm going to impose a fine of \$10,000. I  
7 think it's appropriate under the circumstances of this case.  
8 The forfeiture is \$1,219,000. The special assessment is as it  
9 must be \$100.

10           The conditions of supervision are that Mr. Rubin is  
11 not to commit another federal, state or local crime. He's not  
12 to unlawfully possess a controlled substance, a firearm or  
13 destructive device. And he is to cooperate in the collection  
14 of DNA as directed by the probation office.

15           I don't think there's any need for any drug testing  
16 condition because there's just no evidence in the record that  
17 Mr. Rubin represents any kind of a risk for substance abuse.  
18 The standard conditions of supervision, one to 13 are imposed.  
19 Those will be explained later.

20           In terms of the added conditions, the two that  
21 probation recommends make sense. First, Mr. Rubin is to  
22 provide the probation officer with access to any requested  
23 financial information. And also, Mr. Rubin is not to incur any  
24 new credit charges or additional lines of credit without the  
25 approval of the probation office.

1           In terms of the restitution, 90 days. The government  
2 has to make its case. I'm going to encourage you the stay in  
3 touch with counsel for Mr. Rubin, please. And don't wait until  
4 day 89.

5           In terms of the fine, to the extent Mr. Rubin is  
6 engaged in a Bureau of Prisons, non UNICOR work program, he's  
7 to pay \$25 per quarter towards the criminal financial  
8 penalties. However, if he participates in the UNICOR program,  
9 is a grade one through four, he is to pay 50 percent of his  
10 monthly report earnings toward criminal financial penalties  
11 consistent with BOP regulation 28 CFR Section 545.11.

12           The fine is to be paid -- probation department  
13 recommendations seems steep to me. They're saying \$500 a  
14 month. I'm going to say it needs to be paid -- it's going to  
15 be 10 percent of gross monthly income.

16           Are there any open counts, Mr. Allee?

17           MR. ALLEE: Yes, your Honor. We ask that the Court  
18 dismiss the open counts.

19           THE COURT: All right. That's granted.

20           Mr. Rubin, to the extent you haven't waived, you have  
21 a right to appeal this sentence if you file a notice of appeal  
22 within 14 days of when the judgment is entered.

23           I recognize this is a higher sentence than the  
24 probation department recommended. It's a higher sentence than  
25 Mr. Rubin's counsel advocated for, and it's a sentence lower



1 than what the government wants. In other words, this is a  
2 sentence that makes nobody happy.

3 In my view, some reduction was appropriate, given  
4 Mr. Rubin's good deeds and given his work at Big Apple. But to  
5 me, the severity of the criminal conduct in terms of the amount  
6 of money, in terms of the amount of planning, in terms of the  
7 brazenness of the scheme and the fact that it lasted over a  
8 period of time, in my view were aggravating factors that made  
9 the sentence that I've imposed appropriate under the  
10 circumstances.

11 Anything you want in a judgment, Ms. Necheles?

12 MS. NECHELES: Your Honor, I would just ask if you --  
13 if he could surrender on March 1 and if you could recommend  
14 Otisville.

15 THE COURT: I'll certainly recommend Otisville. I  
16 know you know this but just to say this for the benefit of your  
17 client and his family, all I can do is make a recommendation.  
18 But I will recommend Otisville. I think that makes sense under  
19 the circumstances.

20 The surrender date is March 1 that you're asking for?

21 MS. NECHELES: Yes.

22 THE COURT: And the reason for that is?

23 MS. NECHELES: It's right after some holidays and it  
24 will allow him to try to get some order in his business.

25 THE COURT: Is it right before other holidays?

1 MS. NECHELES: It's before Passover. Passover is not  
2 until April. And so Passover is like -- ends in like the first  
3 week of April, I think.

4 THE COURT: April 7 or --

5 MS. NECHELES: I believe that's --

6 THE COURT: Right. Mr. Allee?

7 MR. ALLEE: We have no position on that either, your  
8 Honor.

9 THE COURT: Well, I mean I'm trying to understand are  
10 the particularly important holidays in February or January?

11 MS. NECHELES: There's Purim.

12 THE COURT: When is Purim?

13 MS. NECHELES: I think the end of February I think  
14 this year. Your Honor, I think that's about 90 days and I  
15 think that is generally what --

16 THE COURT: Okay. All right.

17 So we'll say March 1, that Mr. Rubin is to appear at  
18 the designated facility by 12 noon. And if for some reason the  
19 facility is not designated, he needs to report to the marshal's  
20 office here by noon on March 1, which is Thursday, March 1,  
21 2018.

22 Anything else, Ms. Necheles?

23 MS. NECHELES: No, your Honor.

24 THE COURT: Anything else, Mr. Allee?

25 MR. ALLEE: No, your Honor.

1           THE COURT: All right. We're adjourned. Thank you  
2 everybody.

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4           *(Proceeding concluded)*

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